

December 8 2010

1509-0688 Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA**Thomas T. Tornow, P.C., Attorney-at-Law**

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December 3, 2010

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

Re: Comment on Limited Scope Practice

Dear Mr. Smith:

I am writing to offer my comments to the proposed rule changes to allow limited scope representation.

I support the proposed changes. However, there is one situation that I think needs to be addressed. That is whether an attorney should be allowed to prepare pleadings in a case where the attorney would not be allowed to appear or where the attorney's appearance would divest the Court of jurisdiction.

I had a client come to me with a matter best handled in the Small Claims Division of the Justice Court. I gave the client the Complaint form, told him the filing fee and explained how to serve process. Other than that, I respected the intent of the forum to allow litigants to represent themselves.

My client's opponent was assisted by a local Judge who prepared, but did not sign, the opponent's pleadings making legal arguments far beyond the understanding of a self-represented litigant. This seriously skewed the process and defeated the intent of the Small Claims system to allow small disputes to be resolved by self-representation. It drove up my client's expenses by requiring him to retain an attorney to explain the Judge's arguments. It also interfered with judicial efficiency by requiring the Small Claims Court to deal with pleadings and legal arguments better suited for District Court. Fortunately, my client prevailed despite the Judge's behind the scenes involvement.

Because the Judge, as an attorney, could not appear in the Small Claims Division without divesting the Division of jurisdiction, it struck me as borderline unethical. However, I didn't find anything in the ethical code addressing the issue.

This seems to me to be one of the few situations where allowing limited scope representation would not serve the interests of justice and judicial efficiency. I suggest that the proposed Rules preclude

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an attorney from preparing pleadings under the guise of limited representation if the attorney could not otherwise appear in the case (another situation might be where the attorney is a trial witness) or where the attorney's appearance would divest the Court of jurisdiction.

Sincerely,

THOMAS T. TORNOW, P.C.

By: Thomas T. Tornow